MANHATTAN RESOURCES, INC.

IBLA 75-412 Decided September 9, 1975

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting appellant's noncompetitive oil and gas lease offer NM 24462.

Affirmed.

1. Oil and Gas Leases: Applications: Generally

An oil and gas lease offer filed in the name of a corporation is properly rejected where the offer is signed by an officer who was not shown, by the corporate qualification papers contained in the company's referenced serial number, to be one of the officers authorized to sign for the company, and the offer was not accompanied by a statement showing that he was authorized to act for the company.

2. Oil and Gas Leases: Applications: Drawings

A first-drawn simultaneous drawing entry card which is defective because of noncompliance with a mandatory regulation must be rejected and may not be cured by the submission of further information.

APPEARANCES: Sheridan L. McGarry, Esq., Salt Lake City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Manhattan Resources, Inc., has appealed from a decision of the New Mexico State Office, Bureau of Land Management, dated March 5,

1975, rejecting its oil and gas lease offer NM 24462 for Parcel 431. The offer was filed in December 1974, in a simultaneous drawing procedure, pursuant to 43 CFR 3112. The offer was rejected because no evidence accompanied the offer showing that the person who signed it was authorized to sign for the corporation, as required by 43 CFR 3102.4-1.

The drawing entry card, signed by Elmer E. Gray, Secretary, incorporated the corporate qualifications by reference to serial number U-042200. The Utah State Office reported that appellant's corporate qualifications were filed in that office on August 21, 1974, and showed that only Heath B. Fowler, President, is authorized to sign for the company.

Appellant admits that the Bureau information showed Fowler was the only officer authorized to act in these matters. However, it adds that, pursuant to a resolution of its Board of Directors held on September 4, 1974, Dean Williams, Vice-President, and Elmer E. Gray, Secretary, were also authorized to execute offers for oil and gas leases. It further states that a certificate evidencing that resolution, attested to by the corporate secretary, was filed with the Utah State Office on March 5, 1975, which is also the date of the decision below. Appellant advances certain arguments in urging that the lease should issue. However, these are not persuasive.

Regulation 43 CFR 3102.4-1 requires a corporation to make several showings as to its corporate qualifications. Pertinent to the instant case, the regulation states:

> If the offeror is a corporation, the offer must be accompanied by a statement showing * * * (2) that it is authorized to hold oil and gas leases and that the officer executing the lease is authorized to act on behalf of the corporation in such matters * * *. Where such material has previously been filed a reference by serial number to the record in which it has been filed, together with a statement as to any amendments will be accepted. [Emphasis supplied.]

[1] This Department has repeatedly and consistently held that the regulation is mandatory, and that where the necessary corporate qualifications papers are not filed with the offer or a reference is not made to a case record where such showings previously have been filed, the offer does not comply with the mandatory provisions of the regulations and must be rejected. Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974); The Bradley Producing Corporation, 15 IBLA 147 (1974); Texas American Corporation, 14 IBLA 217 (1974); Apollo Drilling & Exploration, Inc., 10 IBLA 81 (1973), and cases cited.

Appellant maintains that there is no express delineation of what amendments are critical and need be filed, or whether a grant of authority to a particular officer can be considered an amendment, nor are there any specifics as to how or when an amendment is referenced. This contention is without merit. The regulation is clear and free from ambiguity. One of its requirements is that the corporation must show "that the officer executing the lease is authorized to act on behalf of the corporation in such matters." If the offer is signed by one who has not been shown to be authorized to act, it stands to reason that such would be a critical amendment that must be shown. The regulation further states that "[w]here such material has previously been filed a reference by serial number to the record in which it has been filed, together with a statement as to any amendments will be accepted." [Emphasis supplied.]

Appellant further contends that there is no space on the simultaneous card which could be used with any degree of practicality or administrative convenience to make reference to amendments to the qualifications or to specific corporate resolutions which may be recent. The regulation says that the offer "must be accompanied by a statement showing" the corporate qualifications, and this would also be true of any amendments to those qualifications. There is sufficient room on the card for appellant to have added after the referenced serial number the words "amendment attached" or "see amendment attached." Appellant then could have filed with the card a certificate evidencing the resolution by its Board of Directors, which it claims to have filed in the Utah State Office on March 5, 1975.

Furthermore, in United States Smelting Refining and Mining Company, A-29201, A-29227 (April 23, 1963), the Department rejected several oil and gas lease offers filed "over-the-counter" because, as in the instant case, they were signed by an individual who was not shown, by the corporate qualification papers contained in the company's referenced serial number, to be one of the officers authorized to sign for the company, and the offers were not accompanied by a statement showing that he was authorized to act for the company. That case involved the same regulation as the case at hand except that it was then codified as 43 CFR 192.42(f). The regulation is applicable to both simultaneous and "over-the-counter" filings.

[2] If this were a situation where the lease offer had been filed "over-the-counter," the defect could be remedied prior to final adjudication and prior to the filing of any junior offer and the offer would earn priority as of the time the curative data was filed. However, where the offer has been filed pursuant to the simultaneous filing procedures, as in this case, a defective offer may not be "cured" by the filing of supplemental information after the drawing is held. Ballard E. Spencer Trust, Inc., supra; Texas American Corporation, supra, and cases cited therein.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Joan B. Thompson
Administrative Judge